

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA, : NO. 1:08-CR-00039(2)
: :
: :
v. : :
: **OPINION AND ORDER**
: :
DARRYL KINDER. : :
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This matter is before the Court on Defendant's Motion for Preservation of Evidence (doc. 92), and the government's Response (doc. 93).

Defendant moves the Court for an Order requiring the government to preserve the evidence, crack cocaine used against him in this matter (doc. 92). Defendant signals that the Fair Sentencing Act of 2010 ("FSA"), which reduced disparities in sentencing for possession of Crack cocaine in comparison to powder cocaine, could affect his case should the statute be made retroactive (Id.). Although Defendant concedes that the Sixth Circuit has rejected the retroactive application of the Fair Sentencing Act, United States v. Carradine, 621 F.3d 575, 580 (6th Cir. 2010), he anticipates that Congress will probably act to make the FSA fully retroactive (Id.). The government responds that pursuant to administrative policy, the narcotics recovered in this case have been destroyed (doc. 93).

Having reviewed this matter, the Court finds Defendant's

motion moot by virtue of the fact that there is no evidence to preserve. Moreover, it is premature to bank on retroactive application of the FSA, when Congress had not yet taken such a step. Finally, under current Sixth Circuit precedent, retroactive application of the FSA has been rejected. Carradine 621 F.3d 575, 580. Under these circumstances, the Court DENIES Defendant's motion (doc. 92) as moot.

SO ORDERED.

Dated: December 20, 2011

/s/ S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge